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Lee Heng Kooi v Public Prosecutor

HIGH COURT (PENANG) — CRIMINAL REVISION NO 43–16–92
VINCENT NG JC
31 OCTOBER 1992

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Criminal Procedure *— Jurisdiction — First class magistrates' court — Whether magistrate has jurisdiction to try offences which also provide for sentence of whipping — Subordinate Courts Act 1948 ss 85 & 87*

Statutory Interpretation *— Unclear provisions — Whether one limb of a particular*
C *statutory provision may be used to impugn another limb of the same provision*

Statutory Interpretation *— Interpretation Act — Section 40(1) — Whether s 40(1) of the Interpretation Act applies in interpreting issues such as jurisdiction — Interpretation Act 1967 s 40*

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The applicant was tried in the magistrates' court for an offence under s 397 of the Penal Code (FMS Cap 45) which provides for whipping. A preliminary issue was raised and dismissed that s 85 of the Subordinate Courts Act 1948 ('the Act') did not confer upon the first class magistrates' court jurisdiction to try offences which also provide for a
E sentence of whipping. The matter was referred to the High Court for review. Counsel for the applicant contended that the opening phrase — 'subject to limitations contained in this Act' — in s 85 of the Act, meant that whipping must first be provided for in s 85 before the limitation of 12 strokes in s 87 of the Act could arise. Counsel further contended that s 87 purports to illegally extend the punishment of
F whipping to a magistrates' court when there was no provision for such in s 85. It was also contended by counsel that s 40(1) of the Interpretation Act 1967 ought not to be invoked to interpret important issues such as jurisdiction, but only in respect to procedural or administrative matters.

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Held, dismissing the application:

(1) Under the accepted canons of construction of statutes, it is impermissible to employ one limb of a particular provision in a statute to impugn another limb of the same provision. In such cases, other provisions in the same or other Acts could and ought to be
H invoked to assist in the interpretation of the nebulous provision.

(2) Section 87 of the Act should be read in conjunction with the opening phrase in s 85 which the legislature had obviously intended to mean 'subject to the sentence competence of the first class magistrate to pass any sentence, inter alia, of whipping of up to 12 strokes, a first class magistrate shall have jurisdiction to
I try ...'.

(3) Section 40(1) of the Interpretation Act 1967 applies in the interpretation of s 85 of the Act. The clear wording of s 40(1) is wide enough to bring within its ambit all laws including laws governing

jurisdiction and its applicability is not confined to procedural or administrative matters. By virtue of s 40, s 87 clearly confers power to a first class magistrate to impose, inter alia, sentence of whipping of up to 12 strokes and therefore, jurisdiction to try offences which allow for whipping must obviously be implied to enable the magistrate to enforce the Act.

[Bahasa Malaysia summary

Pemohon telah dibicarakan di dalam mahkamah magistret untuk suatu kesalahan di bawah s 397 Kanun Keseksaan (FMS Cap 45) yang memperuntukkan bahawa pesalah boleh dikenakan sebat. Isu permulaan ditimbulkan (dan ditolak) bahaws s 85 Akta Mahkamah Rendah 1948 ('Akta itu') tidak memberi mahkamah magistret kelas pertama bidang kuasa untuk menghakimi kesalahan yang juga memperuntukkan supaya pesalah dikenakan sebat. Perkara itu telah dirujukkan kepada Mahkamah Tinggi untuk kajian semula.

Peguambela pemohon berhujah bahawa frasa permulaan — 'subject to limitations contained in this Act' — dalam s 85 Akta itu, bermakna bahawa kuasa menyebat mestilah dibenarkan di dalam s 85 sebelum batasan sebat hingga 12 kali di dalam s 87 Akta itu boleh dibangkitkan. Peguambela juga berhujah bahawa s 87 bertujuan meluaskan hukuman menyebat secara haram kepada mahkamah majistret sedangkan tidak terdapat peruntukan untuk membuat demikian dalam s 85.

Peguambela juga berhujah bahawa s 40(1) Akta Tafsiran 1967 tidak patut digunakan untuk mentafsirkan isu-isu penting seperti bidang kuasa, tetapi hanya perkara-perkara prosedur atau pentadbiran.

Diputuskan, menolak permohonan itu:

(1) Di bawah prinsip pentafsiran statut yang sudah diterima, penggunaan sebahagian daripada peruntukan tertentu di dalam suatu statut untuk mempersoalkan sebahagian lain dari peruntukan yang sama tidak dibenarkan. Di dalam kes seperti ini, peruntukan di dalam Akta yang sama atau yang lain boleh dan patut digunakan untuk menolong mentafsirkan peruntukan yang kabur.

(2) Seksyen 87 Akta itu harus dibaca bersama dengan frasa permulaan di dalam s 85 yang badan perundangan dengan jelas bertujuan bermaksud — 'tertakluk kepada kompetens hukuman majistret kelas pertama untuk menjatuhkan hukuman, antara lain, sebat hingga 12 kali, suatu majistret kelas pertama akan mempunyai bidang kuasa untuk membicara ...'.

(3) Seksyen 40(1) Akta Tafsiran 1967 terpakai dalam tafsiran s 85 Akta itu. Susunan kata yang jelas dalam s 40(1) cukup luas untuk merangkumi segala undang-undang termasuk undang-undang yang menguasai bidang kuasa dan kegunaannya tidak terbatas kepada perkara-perkara prosedur atau pentadbiran. Oleh kerana s 40, s 87 dengan jelas memberi kuasa kepada majistret kelas pertama untuk menjatuhkan hukuman, antara lain, sebat hingga 12 kali dan oleh itu, bidang kuasa untuk menghakimi kesalahan

A yang membenarkan pesalah dikenakan sebat mestilah dengan jelas tersirat untuk membenarkan majistret menguatkuasakan Akta itu.]

Cases referred to

B 1 *Poh Chin Kay v Menteri Hal Ehwal Dalam Negeri, Malaysia* [1990] 2 MLJ 297 (refd)

Legislation referred to

Criminal Procedure Code (FMS Cap 6) s 323
Interpretation Act 1967 s 40
C Penal Code (FMS Cap 45) ss 392, 397, 457
Subordinate Courts Act 1948 ss 85, 87

Karpal Singh (*Karpal Singh & Co*) for the applicant.
Ishak bin Yusoff (Deputy Public Prosecutor) for the respondent.

D **Vincent Ng JC**: This is a matter referred to the High Court by Mr Karpal Singh for revision under s 323 of the Criminal Procedure Code (FMS Cap 6) on a preliminary issue raised by him in the magistrates' court that s 85 of the Subordinate Courts Act 1948 ('the Act') does not confer upon the first class magistrates' court, jurisdiction to try offences which also E provide for a sentence of whipping.

A preliminary issue was raised to the honourable magistrate (and was dismissed) that by virtue of the aforesaid, the honourable magistrate is not clothed with any jurisdiction to try the learned counsel's client who was also charged under s 397 of the Penal Code (FMS Cap 45) which provides for whipping.

F It was submitted that although s 87 provides for whipping up to 12 strokes, the opening phrase in s 85 'subject to *limitations* contained in this Act' meant whipping must first be provided for in s 85 before the *limitation* of 12 strokes in s 87 could arise. It was also submitted that s 87 purports to *extend* punishment of whipping to a magistrates' court without providing for G it in s 85. This, it was contended, was clearly illegal.

Section 85 of the Act clearly concerns the criminal jurisdiction of first class magistrates whereas s 87 deals with sentences within the competence of the first class magistrate. Section 85 of the Act provides that a 'First Class Magistrate shall have jurisdiction to try all offences for which the maximum term of imprisonment provided by law does not exceed ten years' imprison- H ment or ...' without the words 'with or without whipping' inserted after the words 'ten years imprisonment'.

Though s 85 does not appear to be an immaculately or felicitously crafted piece of legislation, yet I am of the view that under the accepted canons of construction of statutes, it is impermissible to employ one limb of I a particular provision in a statute to impugn another limb of the same provision. Inconsistencies, if any, of the two limbs of a particular provision only makes for lack of clarity of that particular provision and nothing more. In such cases, other provisions in the same or other Acts could and ought to be invoked to assist in the interpretation of the nebulous provision.

As such, we are precluded from holding that the absence of the words 'with or without whipping' in s 85 should or even could be construed as one of the limitations as expressed in the opening phrase of the same s 85. In regard to Mr Karpal Singh's contention that s 87 purports to extend punishment of whipping to the first class magistrate without providing for it in s 85, it is my view that the issue for judicial determination is not a matter of extension of punishment or jurisdiction but rather, how do we interpret s 85, and whether s 87 could assist.

In my considered opinion, s 87 of the Act which provides that a magistrate may pass any sentence allowed by law not exceeding whipping of 12 strokes (in combination with any of the other sentences) should be read in conjunction with the said opening phrase in s 85. Thus, the legislature had obviously intended, by the phrase 'Subject to limitations contained in this Act, a First Class Magistrate shall have jurisdiction to try ...' to mean '*Subject to the sentence competence of the first class magistrate to pass any sentence (inter alia) of whipping of up to 12 strokes*, a first class magistrate shall have jurisdiction to try ...'. This would make for a more comprehensive interpretation of s 85, as encompassing within its ambit, offences which also provide for a sentence of whipping. In this context, it is significant to note that s 85 also provides that a first class magistrate shall have jurisdiction to try offences under ss 392 and 457 of the Penal Code carrying up to 14 years' imprisonment, notwithstanding that these two penal sections clearly provide for sentence of whipping, besides imprisonment.

My above interpretation of s 85 of the Act is further fortified by the provisions of s 40(1) of the Interpretation Act 1967, which states that where a written law confers a power on any person to do or enforce the doing of any act or thing, *all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing*. In the result, as s 87 clearly confers power to a first class magistrate to impose, inter alia, a sentence of whipping of up to 12 strokes, jurisdiction to try offences which allow for whipping must obviously be implied by virtue of s 40 of the Interpretation Act 1967. I do not agree with Mr Karpal Singh that s 40(1) of the Interpretation Act 1967 ought not to be invoked to interpret important issues such as jurisdiction, but only in respect of procedural or administrative matters. On the contrary, the clear wording of this provision, being 'where a written law confers a power on any person to do or ...' besides 'or enforce' is wide enough to bring within its ambit all laws including laws governing jurisdiction.

Though Mr Karpal Singh had today cited a further authority being the decision in *Poh Chin Kay v Menteri Hal Ehwal Dalam Negeri, Malaysia*[1] to advance the principle that s 40 of the Interpretation Act 1967 is inapplicable, as matters such as jurisdiction should be expressly, clearly and unequivocally provided in s 85 of the Act, yet if the opening phrase in s 85 is read in conjunction with the clear provision for whipping in s 87 of the Act, it cannot be denied that the legislature had shown clear and unequivocal intention to also cloth the first class magistrate with jurisdiction to try offences such as under s 397 of the Penal Code notwithstanding the whipping penalty being provided therein.

A For the purposes of interpretation of s 85 of the Act, I would have been almost persuaded by Mr Karpal Singh's eloquent submission if, speaking hypothetically, offences which carry a whipping sentence only, had existed in the Penal Code and if s 85 of the Act talks of offences punishable with fines only (there being such offences in the Penal Code) but omits to mention offences punishable with whipping only.

B It is unnecessary to call the learned DPP to reply.

For the above reasons, I hold that the magistrate in the current case under revision, was clearly acting within his jurisdiction in trying the offence under s 397 of the Penal Code; so indeed, had all the magistrates who had tried offences carrying the penalty of whipping since 1948, and I

C so rule.

Order accordingly.

Reported by Angela Png

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